

# Letter From The Puerto Rico Healthcare Community

September 6, 2016

## VIA REGULATIONS.GOV FILING

Andrew M. Slavitt  
Acting Administrator, Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-1654-P  
P.O. Box 8013  
Baltimore, MD 21244-8013

**RE: CY 2017 Medicare Physician Fee Schedule Proposed Rule – Section II.I (Geographic Price Cost Indices)**

**Thank you for taking a major step for Puerto Rico;  
BUT Urgent Action is still needed to generate real impact, and create balance in Medicare  
Programs for beneficiaries that reside on the Island**

Dear Administrator Slavitt:

Last July 15<sup>th</sup>, 2016, the Centers for Medicare and Medicaid Services (CMS) released the proposed regulation for the **Medicare Physician Fee Schedule (PFS)** for 2017. We are very thankful for the efforts of the Department of Health and Human Services (HHS) and the CMS leadership in recognizing the problematic imbalance in the definition of the geographic factors for Puerto Rico, compared to the states, and also with the US Territories. By proposing the use of the same level Geographic Price Cost Indexes (GPCIs) as the US Virgin Islands, CMS is taking a very significant step to restore needed balance in physician payments across neighboring US Territories, and, most importantly, across the Medicare FFS program nationwide. Decades of being an outlier at the bottom have degenerated the healthcare system of the Island relative to the development of the Medicare program nationwide. Funding for Medicare in Puerto Rico has been an outlier at the bottom in Medicare Part B for many decades, but also in Medicare Part A, Medicare Advantage, and Medicare Part D. This proposal could certainly be the start of the development of a Medicare system in Puerto Rico that is rational, and comparable to the version of the program we see elsewhere. We ask CMS to retain this proposal for the Final Rule, noting that urgent action is needed to implement the change with the proper balance and desired effect across Medicare programs to generate the appropriate meaningful impact to beneficiaries.

Our current urgent concern is that this vital step, as proposed, is only implementing a fraction of the intended change. Medicare Part B beneficiaries in Puerto Rico have mostly chosen to receive their benefits through the Medicare Advantage (MA) program. Today, approximately 90 percent of all beneficiaries with **Part B** are in MA, and only 10 percent are in Traditional Medicare FFS. As we have explained in past formal comments on Medicare payment regulation, most recently in

the comments to the Medicare Advantage 2017 Advance Notice, this positive step creates a momentary misalignment with significant implications for plans, beneficiaries and providers in Puerto Rico. We urge HHS and CMS to address this situation with urgency, as **time** could be the determinant of a rational implementation of this vital policy proposal for Puerto Rico.

The basic MA benchmark setting policy as defined in the Affordable Care Act (ACA) is that rates are based on the best estimation of the cost of the Medicare FFS program in each locality for the next MA contract year. Since the **MA Rate Announcement** was released April 4 2016, it does not incorporate this historic adjustment proposed for physician GPCIs in FFS Medicare, which according to our actuaries imply an increase of approximately 5 percent in the overall Medicare FFS cost for Puerto Rico in 2017. The timing of the regulatory cycle applies to all providers and MA organizations in all jurisdictions. However, year-to-year variations in the PFS are typically not so meaningful (-/+1 percent) for each locality. The Puerto Rico year-to-year change in physician fees proposed for 2017 is certainly extraordinary, unlike any other adjustment occurring elsewhere, and not what typically occurs from one year to the next. Moreover, with 90% penetration among Part B beneficiaries, the impact in MA is really the implementation step that will generate meaningful impact in the healthcare system of the Island.

In previous comments earlier in the year, the health care community of Puerto Rico anticipated that CMS was likely to take action on GPCI and other FFS rates proposals that we have been proposing for several years (*See Appendix 1, PR Community Comment Letter to the MA 2017 Advance Notice, March 4, 2016*). In light of the possibility, and the disparate calendar cycles between MA and FFS rate regulation, we presented a couple of ideas to address the situation. One option was based on including a tentative adjustment as part of the **MA Announcement** released on April 2016. Our rationale followed the example of the implementation plan used by CMS for the SGR “Doc Fix” in 2014, in which case the HHS and CMS proposed the greater than 20 percent FFS cost assumption increase to be considered in MA rates, even though Congress had yet not formalized the change in law. In fact, the change formally occurred in December, nine months after the MA rates were announced, and one month before the effective date of both the PFS and the new MA rates. A second proposed option was to issue a timely **Interim Final Rule** for the determination of the 2017 policy in relation to the use of an alternate GPCI method in the case of **Part B**, and the use of a proxy to substitute for the SSI indicator in **Part A** payments. This would have meant that the FFS adjustments would have been formalized in Federal regulation in time to be incorporated in the MA 2017 Ratebook calculations, and **Final Call Letter**.

Unfortunately, in this past **MA 2017 Rate Announcement**, CMS did not include specific language related to the anticipation of a probable significant change in FFS 2017 fees for Puerto Rico, or issue a timely **Interim Final Rule** to that effect. CMS has included language in several of the Medicare regulation about the continuous examination of the appropriateness of the FFS and MA rates in Puerto Rico, but as seen below, the response in the **Final MA 2017 Announcement** was limited to stating that CMS uses “**FFS data to reflect payment parameters that are finalized by the time of the rate announcement**”. This is precisely the issue we had identified and anticipated since last year.

### **From CMS MA Announcement 2017, Released April 4, 2016**

**Comment:** One commenter requested that CMS adjust MA rates to account for anticipated changes in Part A (SSI eligible simulation for Uncompensated Care) and Part B (Practice Expense GPCI) rates through CMS rulemaking. The commenter noted that, as part of the FY FFS rulemaking process, two specific issues are still being evaluated that could generate Part A and Part B rate increases in the FFS program of Puerto Rico starting October 1st 2016 (Part A) and January 1st 2017 (Part B). The commenter mentioned the timing of the rulemaking process versus 2017 rate-setting, and was concerned about a potential imbalance in MA 2017 payments if no adjustment were made to FFS costs.

**Response:** Consistent with prior years, we have adjusted the historical ratebook FFS data to reflect payment parameters that are finalized at time of the Rate Announcement. Accordingly, the CY 2017 ratebook repricing reflects the latest regulations for fiscal year 2016 (for example: 26 inpatient hospital, outpatient hospital, and skilled nursing facilities) and calendar year 2016 (for example: geographic practice cost index, and DMEPOS payment schedules). Further, the Puerto Rico inpatient hospital claims have been repriced to reflect the provisions of the Consolidated Appropriations Act, 2016.

Accordingly, the current scenario is that we could see a significant disconnect between the current estimate of 2017 FFS costs, and the 2017 FFS cost assumptions that CMS used for setting MA rates. An impact of 5 percent is meaningful, and actuaries of several plans expressed concerns as we approached the time for the final adjustments and actuarial certifications for the MA 2017 plans, which occurred in August. We acknowledge the fact that MA contracts with providers are not required to be tied to the Medicare PFS. However, it should be clear that, in general, provider compensation and benefits to members in 2017 will NOT be impacted or supported by this FFS cost change given the adjustment is currently NOT present in the MA rates development for 2017. If adjustments in MA costs were considered, bid assumptions and product definitions would be incongruent with the proposed increase for 2017. The only situation we can identify of a similar magnitude is the aforementioned SGR “Doc Fix”.

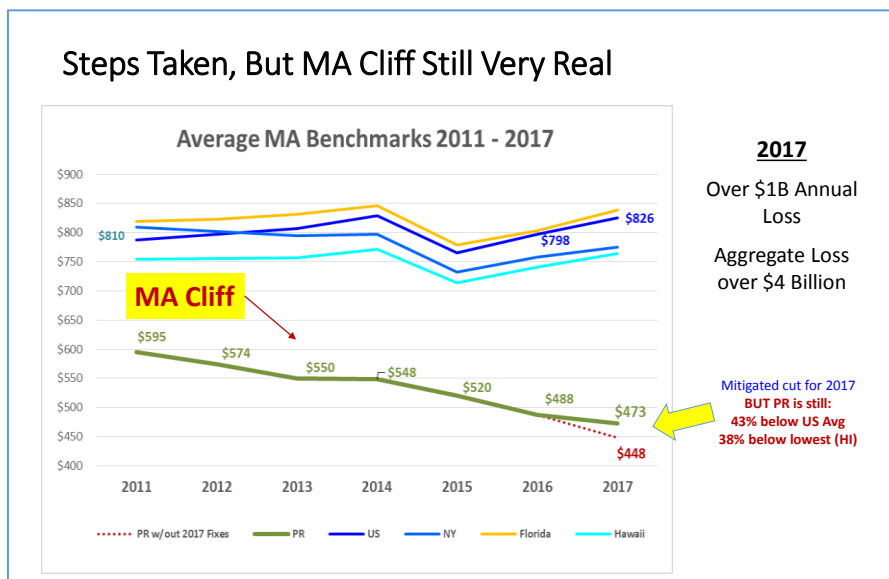
We request that CMS (1) finalize the proposed GPCI adjustment immediately in September through interim final regulation, and (2) reopen bid negotiation with Puerto Rico MA plans, based on revised FFS benchmarks reflecting the GPCI adjustment, to ensure that MA benefit packages and the corresponding payment rates from MA truly correspond to expected FFS expenditures in 2017. This is fully within the discretion of CMS. There is a short window of time, but we think there is one, if a calendar can be implemented in September to make the changes and get MA plans approved. We believe there could still be time for plans to get back aligned with the regular calendar for the date in which the Annual Enrollment Period in **October 15<sup>th</sup>, 2016**.

Alternatively, we request that the final rule for the PFS includes an explicit explanation of how this extraordinary, out of the norm, year-to-year change in the FFS GPCIs is not accounted for in the current MA rates for 2017. We also request that CMS expressly discuss in the **Physician Fee**

**Schedule Final Rule** that the adjustment will be incorporated in the development of the FFS cost estimates for the next MA benchmark definition in 2018. Although not the best scenario, these clarifications could support a more appropriate understanding and balance in the 2017 “transition” with regards to MA benefits and relations between MA organizations and providers in Puerto Rico. An expectation that physicians will see an increases in their MA payments, even in cases where compensation has been traditionally tied to the PFS, conflicts with the MA bid process and rules, and may not be in accordance with the actuarial certifications that were submitted in August to approve MA plans for 2017. Given this incongruence that the time lag creates between Medicare PFS rule and the MA bid rules for 2017, the clarification of the non-applicability to MA 2017 in the final rule is crucial to support the stability of our system, of beneficiary and provider relations, and the actuarial soundness of the MA program in Puerto Rico for 2017. These requests are in line with those presented by **Congressman Pedro Pierluisi** in his recent letter to Secretary Burwell, on August 15<sup>th</sup>, 2016. (**See Appendix 2**)

As seen in **Chart 1** below, even after recent CMS initiatives to address FFS data anomalies, the MA benchmarks in Puerto Rico saw another decline of **3%** from 2016 to 2017, resulting in a cumulative **21%** reduction compared to 2011 rates. This is by far the largest MA funding cut since 2011 of among all jurisdictions in the US.

**Chart 1 – MA benchmark reductions continue for CY2017 in Puerto Rico**

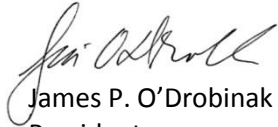


We are very thankful for HHS’ and CMS’ leadership in taking these vital steps to provide much needed balance and rational Medicare funding to Puerto Rico. In this case, given such a potentially positive step, but a misalignment of the same magnitude for one year (2017), we request the help from HHS and CMS in supporting the congruence and stability of the MA bid process and the MA program that serves 90 percent of the Medicare Part B population in Puerto Rico.

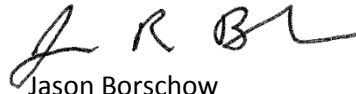
**Appendix 1** – PR Community Comments for Medicare Advantage Advance Notice and Draft Call Letter, March 4, 2016 (Section 2 in pages 7-8; See full letter in Appendix 2)

**Appendix 2** – Letter from Congressman Pierluisi to Burwell, August 15, 2016

Sincerely,



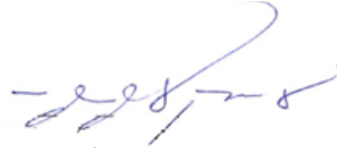
James P. O'Drobinak  
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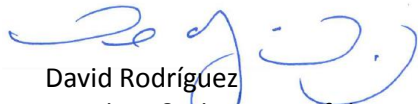
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